IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION No.306 OF 2005.

Bhaguji Pandurang Kadam. ..Petitioner.

Vs.

Smt. Nathibai Damodhar
Thakarsi Women's University
and others. ..Respondents.

Ms. R. V. Pawar, Advocate i/b V. G. Mujumdar, Advocate for the Petitioner.

Mr.Rui Rodgrigue, Advocate for the Respondent.

CORAM:R.M.S.KHANDEPARKAR,J.

DATED:14th DECEMBER, 2006.

P.C.:-

1. Heard.

2. The petitioner challenges the judgment and order dated 6th April, 2004 passed by the University and College Tribunal, Mumbai in Appeal No. 34/2003. By the impugned order the appeal filed by the petitioner has been dismissed. Placing reliance in the decision of the Apex Court in the matter of **Bhagwan Dass and others Vs. State of Haryana reported in A.I.R. 1987 S.C. 2049 and Mahendra L. Jain and others Vs. Indore Development**

Authority and Others, (2005) 1 Supreme Court Cases 639, the learned Advocate for the petitioner submitted that the Tribunal was pleased to dismiss the appeal in spite of the fact that the petitioner was selected by following the regular procedure for appointment for the post of Security Officer. Considering the facts of the case, according to the learned Advocate for the petitioner, the Tribunal ought to have directed the respondent to grant permanency benefit to the petitioner and pay scale at par with regular employee occupying the post of Security Officer. The Tribunal in the impugned order has clearly held on detail analysis of materials on record that the petitioner's appointment was on contractual basis and on consolidated remuneration. The said finding has been arrived at on the basis of materials placed before the Tribunal by the parties and the learned Advocate for the petitioner has not been able to find out any perversity in the said finding nor has been able to bring to my notice any material which would reveal the said finding to be contrary to the materials placed before the Tribunal. Obviously,

therefore, the petitioner was not selected by following the regular procedure nor his appointment was in a permanent vacancy. When there is appointment on contractual basis for a fixed period, question of Tribunal directing the respondent to grant permanency benefit to the petitioner cannot arise. In case, his appointment is of temporary nature for a fixed period, on a consolidated remuneration, such an employee cannot claim a salary at par with the salary drawn by the regular employee even though occupying the similar post. Law in that regard is well settled by the catena of decisions including that of the Apex Court in **Mahendra L. Jain Vs. Indore Development Authority (supra)** relied upon by the petitioner, has ruled accordingly.

3. It has been held therein that the employee on daily wages does not hold any post duly sanctioned by the Competent Authority and, therefore, is not entitled to take benefit of the doctrine of equal pay for equal work. The decision in **Mahendra L. Jain's case (supra)** rather than assisting the petitioner, justifies the impugned order.

Attention was sought to be drawn to para 18 of the said judgment, wherein it was held by the Apex Court in relation to the case of **Mahanedra L. Jain's case** that the posts of Sub-Engineers in which the appellants therein were appointed, it was nobody's case, that those were sanctioned posts. Undisputedly, the concerned Authority before making those appointments had neither intimated the Employment Exchange about the existing vacancies, if any, nor issued any advertisement in relation thereto. Undisputedly, the condition precedent for appointment of the Officers and servants by the Authority, as contained in Service Rules had not been complied with. The appointments of the appellants were held to be void ab initio being opposed to public policy, as also violative of Articles 14 and 16 of the Constitution.

4. One fails to understand, how the said observation can be of any help to the petitioner. On the contrary, the said ruling particularly in para 19 wherein it has been held by the Apex Court thus, justifies the

impugned order:-

> "The question, therefore, which arises for consideration is as to whether they could lay a valid claim for regularisation of their services. The answer thereto must be rendered in the negative. Regularisation cannot be claimed as a matter of right. An illegal appointment cannot be legalised by taking recourse to regularisation. What can be regularised is an irregularity and not an illegality."

5. The decision in **Bhagwan Dass's case (supra)** is also of no help to the petitioner. Attention was sought to be drawn to para no.5 of the judgment wherein the Apex Court has held that when the appointments are made on temporary basis and in accordance with the schemes, the employees are not entitled as a matter of right tobe absorbed as regular employees on permanent basis. The impugned

decision is in accordance with view taken by the Apex Court.

6. The Apex Court, therefore, has clearly held that the back door entries cannot be allowed nor can be regularised and courts cannot give approval to such back-door entries. Viewed from this angle, no fault can be found with the impugned order passed by the Tribunal rejecting the Appeal filed by the petitioner and refusing to grant relief in the nature of direction to make permanent to the petitioner who had not been appointed on regular basis after following the procedure prescribed for appointment of a regular employee. Appointment being purely on contractual basis, on a consolidated salary, the Tribunal was justified in rejecting the application for permanency benefit. While rejecting the claim of the petitioner, there being no jurisdictional error, the impugned order does not warrant any interference in exercise of power under Article 227 of the Constitution.

7. For the reasons stated above, therefore, there is no case made out for interference. The petition therefore, fails and is rejected.

[R.M.S.KHANDEPARKAR,J]